

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Ellen Gavin
Marshall Johnson
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Faribault
Energy Park, LLC for a Certificate of Need for
a 250-Megawatt Electric Generating Facility

ISSUE DATE: January 27, 2003

DOCKET NO. IP-6202/CN-02-2006

ORDER FINDING APPLICATION
SUBSTANTIALLY COMPLETE AND
REFERRING MATTER FOR CONTESTED
CASE PROCEEDING

PROCEDURAL HISTORY

On November 19, 2002, Faribault Energy Park, LLC (FEP or the Company) submitted a certificate of need application for a 250-megawatt, gas-fired electric generating facility to be constructed near Faribault, Minnesota.

On November 20, 2002, the Commission issued a notice requesting comments on the substantial completeness of the Company's application. The comment and reply periods indicated in that notice ended on December 9, 2002, and December 19, 2002, respectively.

On December 11, 2002, the Commission issued its ORDER EXTENDING COMPLETENESS REVIEW PERIOD.¹ In that Order, the Commission indicated it would consider the completeness of FEP's filing at its first meeting in January 2003.

On December 9, 2002, the Minnesota Department of Commerce (the Department) filed comments on completeness.

¹ The extension, authorized by Minn. Rules, Part 7825.3200, was necessary because Minn. Rules, Part 7849.0200, subp. 5 provides a 30-day period for the Commission to review the certificate of need application for completeness and the Commission found that this time period was insufficient to properly review the Company's filing for completeness.

On December 10, 2002, the Minnesota Environmental Quality Board Staff (EQB Staff) also filed comments.

On December 20, 2002, the Company submitted reply comments, including additional information in response to several rules.

The Commission met on January 9, 2003 to consider this matter.

FINDINGS AND CONCLUSIONS

I. SUMMARY OF ACTION

In this Order, the Commission's principal decisions are to accept the Company's application for a certificate of need as substantially complete, to refer the filing to the Office of Administrative Hearings (OAH) to conduct a contested case proceeding, and to request the Department to coordinate state agency efforts to carry out the responsibilities listed in Minn. Rules, part 4410.7100, including preparation of the Draft Environmental Report.²

II. THE CERTIFICATE OF NEED REQUEST

FEP has submitted a certificate of need application for a 250-megawatt, gas-fired electric generating facility to be constructed near Faribault, Minnesota. The Company stated that output from the generating facility would be used to serve customers of the municipal utilities that are members of Minnesota Municipal Power Agency (MMPA). As part of its filing, the Company provided information that it asserted complied with the filing requirements of the applicable certificate of need rules, Minn. Rules, Parts 7849.0010 to 7849.0400.

III. THE DEPARTMENT'S WRITTEN COMMENTS

The Department stated that FEP met the requirements of the rules with some exceptions. The Department identified 16 areas that it believed required additional information. The Department recommended that the Commission declare the application complete pending the Company either indicating where information may be found in the application or submitting the required information in a supplement to the application.

² By separate Order, the Commission gives notice regarding the prehearing conference in the contested case hearing and provides additional information regarding that proceeding. See NOTICE AND ORDER FOR HEARING in this docket, issued January 27, 2003

IV. THE EQB STAFF'S WRITTEN COMMENTS

The EQB Staff indicated that it found nothing that would preclude the Commission from finding the application substantially complete.

The EQB Staff suggested that the Commission designate EQB to prepare the environmental review of the project for the Commission's certificate of need process. The EQB stated that it is currently in the process of amending its rules regarding the Environmental Report required at the certificate of need stage and suggested that it could develop an environmental assessment under the proposed rules. The EQB also stated that the entire state review process would be expedited if EQB conducted the environmental review for the Commission's certificate of need process as well as the EQB's site selection process.

V. FEP'S RESPONSE TO THE DEPARTMENT'S CONCERNS AND EQB'S PROPOSAL

In response to the Department's comments regarding completeness, the Company supplied supplementary material and requested that the Commission find the Company's filing substantially complete.

Regarding EQB's proposal to do the environmental review for the certificate of need process, the Company stated that it did not oppose the EQB's proposal, as long as it would not delay the Commission's final action in this docket.

VI. COMMISSION ANALYSIS AND ACTION

The Company's proposed generating facility would be a "large energy facility" as defined by Minn. Stat. § 216B.2421, subd. 2 (1).

A. Completeness of the Filing

The certificate of need filing requirements for a large energy facility, such as proposed by the Company in this matter, are found in Minn. Rules, Parts 7849.0010 to 7849.0400. Following FEP's provision of additional information to the Department (copies of which were filed with the Commission as part of the Company's December 20, 2002 Reply Comments), no party claimed that the Company's application was incomplete.

In advance of the January 9, 2003 hearing in this matter, Commission Staff identified a piece of information it deemed still missing from the Company's application: a response to Minn. Rules, Part 7849.0320, item D (2). At the hearing the Commission reviewed additional information provided by the Company responsive to that concern and the Company formally filed that information on January 13, 2002.

Based on the parties' comments and its own review, the Commission finds that the Company's application is substantially complete.³

B. Environmental Review Requirements

The Commission is responsible for preparation of an environmental report on FEP's proposed power plant in this certificate of need proceeding. Minn. Rules, Part 4410.7100. In previous dockets where this has been required, the Commission has asked the Department to prepare the report and carry out other responsibilities under the rule. In the current proceeding the Commission has an offer from EQB Staff to prepare the report for the reasons stated above.

Both agencies are qualified to prepare environmental reports and the Commission appreciates the EQB's offer. When finally adopted, the environmental assessment rules that the EQB proposed to follow in making its report will supercede the review described and required by Minn. Rules, Part 4410.7100. At this time, however, EQB's environmental assessment rules are currently in the process of adoption and remain subject to agency review. In these circumstances, the Commission finds it more prudent to continue its practice of requesting the Department to file this report pursuant to the currently applicable rule, Minn. Rules, Part 4410.7100. The Department has considerable experience in complying with the directives of the environmental report rule and has specialized expertise in some content areas of the report.

C. Contested Case Proceeding Advisable

Contested case proceedings are required when there are material facts in dispute. There is no way that an absence of factual disputes could be known at the present time, particularly since certificate of need proceedings for generation plants can be factually complex and involve significant public interest concerns. If this proceeding were started as an informal proceeding and later factual disputes arose and had to be reconfigured as a contested case proceeding, the entire process could take more time than if it were started as a contested case. Moreover, the Commission is under a six-month statutory deadline for deciding this matter. See Minn. Stat. § 216B.243.

In these circumstances, the Commission finds it most prudent to refer the matter at once to the OAH for a contested case proceeding.

To ensure that the public interest is properly examined in this matter, Commission staff will work with the Administrative Law Judge in selecting suitable locations for the public and evidentiary hearings on the application. In addition, the Commission will require that the Company facilitate

³ The significance of the "substantially complete" date is that the relatively short period for processing the certificate of need application (six months, per Minn. Stat. § 216B.243) begins on the day that the applicant files the final required piece. As indicated above, that date in this case is January 13, 2003.

in every reasonable way the continued examination of the issues by the Department and other official intervening parties. Finally, the Commission will also request that the Department continue to study the issues and provide recommendations on the reasonableness of granting a certificate of need to the Company.

D. Notice Procedures

By separate Order today, the Commission is issuing a NOTICE AND ORDER FOR HEARING regarding the OAH's first meeting regarding this matter (the Prehearing Conference). The Commission will publish the NOTICE AND ORDER FOR HEARING in the State Register and mail copies to persons known to be interested in the proceeding. In addition, Commission staff typically arranges for publication in the *EQB Monitor* of a notice giving the time and place of the prehearing conference.

FEP has indicated that the owner of the land that FEP plans to purchase for the proposed generation plant is aware that FEP is applying to the Commission for a Certificate of Need. However, consistent with concerns about mailed notice to property owners potentially affected by energy projects, the Commission will require FEP to mail notice of the certificate of need application and hearings to persons owning and/or living on property designated in the Company's application to the EQB as a possible site for the proposed facility.

Further, FEP will be required to provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings. Such notice must be in the form of visible display ads.⁴

ORDER

1. FEP's application is substantially complete as of January 13, 2003.
2. The Commission requires a contested case proceeding on the merits of the Company's filing and is referring the matter to the Office of Administrative Hearings for that purpose. See NOTICE AND ORDER FOR HEARING, issued in this docket January 27, 2003.
3. The Department of Commerce is requested to continue studying the issues and to provide recommendations on the reasonableness of granting a certificate of need to the Company.

⁴ The Company will be required to obtain proofs of publication of such ads from the newspapers selected and consult with Commission staff on the timing, text, and distribution of such ads prior to publication.

4. The Company shall facilitate in every reasonable way the continued examination of the issues raised by the Department and other official intervening parties.
5. FEP shall use best efforts to provide direct mail notice of the certificate of need application and hearings to persons owning and/or occupying the property designated in the Company's application to the EQB as a possible site for the proposed facility.
6. In addition, the Company shall provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings. Such notice shall be in the form of visible display ads. The Company shall obtain proofs of publication of such ads from the newspapers selected and shall consult with Commission staff on the timing, text, and distribution of such ads prior to publication.
7. Regarding environmental review, the Department is requested to coordinate state agency efforts to carry out the responsibilities listed in Minn. Rules, Part 4410.7100, including preparation of the Draft Environmental Report, the distribution of the report, the response to comments from the public, and the notice of completion of the Final Environmental Report in the EQB Monitor.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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